

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)	Case No. 1:12 CR 285
)	
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
-vs-)	
)	<u>MEMORANDUM OPINION</u>
BRIAN CARNEGIE,)	<u>AND ORDER</u>
)	
Defendant.)	

This case is before the Court on Defendant, Brian Carnegie's Motion for Modification or Reduction of Sentence pursuant to 28 U.S.C. § 2255, and his request to appoint counsel. (ECF # 1985, 1996). Mr. Hill previously filed a §2255 motion to vacate on July 8, 2016, which was denied. (ECF #1672, 1687). In 2017, almost a year after the denial of his motion, Mr. Carnegie filed a request with the Sixth Circuit Court of Appeals for authorization to file a second or successive motion to vacate. The Sixth Circuit denied his request. (ECF #1792).

Section 2255 provides that:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain —

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

See 28 U.S.C. § 2255(h).

Because Mr. Hill has failed to receive authorization from the Sixth Circuit to file this second or successive §2255 motion, the motion may not be reviewed by the Court. Therefore, the Clerk of Court is directed to transfer Mr. Hill's instant motion to the Sixth Circuit Court of Appeals pursuant to *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997). Mr. Carnegie's Request to Appoint Counsel (ECF #1996) is denied as moot.

IT IS SO ORDERED.


Donald C. Nugent
United States District Judge

Date:

